IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 169 of 1986

in

SPECIAL CIVIL APPLICATIONNo 4314 of 1985

with

CIVIL APPLICATION NO.823 OF 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRIKANT D VADERA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 169 of 1986

NOTICE UNSERVED for Appellant

MS SONAL VYAS AGP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 23/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant appeal under clause 15 of the Letters Patent, the appellant has challenged legality of (a) judgment dated January 13, 1986 rendered by the learned Single Judge in Special Civil Application No. 4314 of 1985 by which the prayer made by the appellant to issue a writ of mandamus or any other appropriate writ, or order directing the respondent to give the benefit of the selection grade and/or higher scale and/or promotion to the higher post to the petitioner from the dates on which his immediate junior Shri G.D. Vyas was given all those benefits and to pay all the arrears of difference in salary and give all the benefits consequent thereto, is rejected and (b) legality of order dated April 29, 1986 passed by the learned Single Judge in MCA No.62 of 1986 by which prayer made by the appellant to review the judgment date January 13, 1986 rendered in Special Civil Application No.4314 of 1985, is refused.

2. It may be stated that Special Civil Application No.4314 of 1985 was heard alongwith Special Civil Application No.804 of 1985 which was filed by Mr. J.S. Rajput because the points involved in both the petitions were common. Further, by common judgment dated January 13, 1986 both the petitions were dismissed by the learned Single Judge. The petitioners of both the petitions had filed review applications which were also dismissed by the learned Single Judge by common order dated April 29, 1986. Feeling aggrieved by the order dated January 13, 1986 which was passed in Special Civil Application No. 804 of 1985 and order dated April 29, 1986 which was passed by the learned Single Judge in MCA No.63 of 1986, Mr. J.S. Rajput had filed LPA No.176 of 1986. The same has been disposed of by this Court vide judgment dated April 23, 2003.

3. On elevation of the learned advocate of the appellant on Bench, a notice was issued to the appellant calling upon him to make necessary arrangement for his appearance in the matter either in person or through lawyer and the notice has returned unserved "as not residing at the given address". It was the duty of the appellant to notify change in his residential address in the memorandum of the appeal as required by rules. For

non-service of notice the appellant himself is responsible and it cannot be said that appropriate steps have not been taken by the office to serve the petitioner on elevation of the learned advocate of the appellant on Bench.

4. This matter is notified on Board for final hearing on 17 different occasions. The appeal is very old, that is, of the year 1986 and, therefore, the Court has decided to dispose of the appeal on merits after seeking assistance from Ms.Sonal Vyas, learned AGP appearing for the respondent.

5. For the reasons stated in the judgment which is delivered in LPA No.176 of 1986, we are of the opinion that instant appeal cannot be accepted and is liable to be dismissed.

6. For the foregoing reasons, the appeal fails and is dismissed. There shall be no orders as to cost.

7. As the main appeal is disposed of, Civil Application for interim relief during the pendency of the appeal does not survive and hence it is rejected. Rule is discharged. Ad-interim relief granted by order dated May 26, 1986 is hereby vacated. There shall be no orders as to cost.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

(karan)